

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

Case No. 18-20495

v.

Hon. David M. Lawson

Ibraheem Izzy Musaibli,

Defendant.

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**Defendant's Response to Government's
Motion to Admit ISIS Documents**

Ibraheem Musaibli was charged on April 9, 2019, in a four-count superseding indictment with Providing and Attempting to Provide Material Support to a Designated Foreign Terrorist Organization, in violation of 18 U.S.C. § 2339B; Conspiracy to Provide Material Support to a Foreign Terrorist Organization, in violation of 18 U.S.C. § 2339B; Possessing and Discharging a Firearm (Machine Gun) in Furtherance of a Crime of Violence, in violation of 18 U.S.C. § 924(c); and Receipt of Military Type Training from a Foreign Terrorist Organization (ISIS), in violation of 18 U.S.C. § 2339D(a). On July 29, 2019, Count 3, the § 924(c) charge, was dismissed.

In support of these remaining counts, the government seeks to admit alleged ISIS documents under the theory that they either identify Mr.

Musaibli or are general documents about ISIS; alleged co-conspirators with Mr. Musaibli; or about a brigade that is possibly associated with Mr. Musaibli. The government should be precluded from introducing any testimony or related evidence in documentary form because it has not laid a foundation for admission of these alleged ISIS documents. Moreover, Mr. Musaibli denies all the factual proffer underlying the government's motion at this time.

I. Counsel will file unopposed supplemental briefing.

On December 31, 2020, counsel filed two motions seeking that the government provide Mr. Musaibli a bill of particulars that details, in particularity, information related to each remaining counts, and a motion seeking disclosure of statements it seeks to admit as co-conspirator statements. *See* R. 103 – Mtn Bill of Particulars, PgId 350; R. 105 – Mtn Regarding Admissibility of Co-Conspirator Statements, PgId 368.

Counsel received government expert witness disclosures as it relates to ISIS documents on January 15, 2021. Those witness disclosures relate directly to the proposed witnesses detailed in this government motion, but defense counsel awaits FBI 302s of the referenced cooperating witness number one that is the only one alleged to possibly have some direct knowledge. *See* R. 102 – Mtn to Admit ISIS Documents, PgId 335-37.

Defense counsel is diligently reviewing these recent disclosures and records, proposed witnesses, and investigating in order to adequately file its factual basis and objections to the proposed admission of ISIS documents related to Mr. Musaibli and the alleged co-conspirators.

Defense counsel communicated with government counsel regarding this response, and it did not object to defense counsel filing a supplemental brief that includes detailed objections on or before April 15, 2021, the original due date for such challenges per the scheduling order entered by this Court before the government filed its motion to admit the documents. R. 100 – Amended Scheduling Order, PgId 312. This date was chosen to give Mr. Musaibli sufficient time to review and investigate the government’s proffered facts and testimony in support of admission. Counsel will endeavor to file a responsive supplemental brief on or before the date set forth in the scheduling order.

II. The government has not laid a foundation for the admission of these documents found overseas.

The government seeks to introduce a number of alleged ISIS documents that were either found by Iraqi military forces or unspecified military units working with United States-led military forces (Coalition Forces) throughout Iraq and Syria. These documents include alleged ISIS roster listing, subsistence records, administrative reports, hospital records,

and other reports related to a brigade. Mr. Musaibli objects to these documents being admitted because the government has not laid a foundation for their admission.

The government has not proffered information to lay a foundation to the documents or underlying data. It seeks to use for authentication purposes four witnesses per Federal Rule of Evidence 901(b)(1) that may have knowledge of ISIS documents, and one that is vaguely described as updating some of the documents. R. 102 – Mtn to Admit ISIS Documents, PgId 335-37. Nonetheless, the government has not laid a foundation for the data that is independent of what it intends to use witnesses for in this case. Nor has it detailed that these individuals were involved in the day-to-day operations, custodians of these documents, creators of these underlying documents, or familiar with the maintenance of these documents during the period when they allege to include information directly, or indirectly, of Mr. Musaibli. This is the first hurdle that the government must clear before the Court may consider its request to admit these documents.

Conclusion

Ibraheem Musaibli objects to the admission of the alleged ISIS records because the government fails to lay a foundation for their admission. Counsel will continue reviewing the recent government disclosures and

records, proposed witnesses, and investigate in order to adequately file its factual basis and objections. Thus, counsel will file a more detailed response to the government's proffered facts and witnesses by April 15, 2021, the date specified in the Court's scheduling order.

Submitted,

s/ Fabián Rentería Franco
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Dated: February 9, 2021

Certificate of Service

I certify that on February 9, 2021, I filed

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through the court's docketing system, which should send notification to opposing counsel of record.

/s/ Fabián Rentería Franco
Fabián Rentería Franco

Dated: February 9, 2021